



# Existing use rights

## Understanding how & when they apply

### What are 'existing use rights'?

Existing use occurs when your land is being used in a legal way, either with an approved permit or an approved use where a permit is not required, and the planning controls now in place prohibit that use.

Existing use rights are in place to reduce the potential negative impacts that could occur if people were forced to discontinue the use of their property because of a change in planning controls.

At the same time, it allows for a transition of land to the new preferred planning outcomes.

### Do I need a planning permit for buildings and works associated with existing use rights?

Building and works associated with existing use rights generally need a planning permit and must comply with current planning requirements.

### How do I know if my property has existing use rights?

Existing use rights apply to the land, not the owner. If you believe your property has existing use rights the onus is on you as the owner to prove this.

According to the Golden Plains Shire Planning Scheme (Clause 63.11), an existing use may be established in one of the following ways:

- The use was lawfully carried out immediately before the approval date;
- A permit for the use had been granted immediately before the approval date and the use commences before the permit expires;
- A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires;
- Proof of continuous use for 15 years is established under Clause 63.11;
- The use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.

#### How do I prove existing use rights?

One method for establishing existing use rights is by providing proof of continuous use for a period of at least 15 years. This will involve producing a combination of historical information, including, but not limited to:

- Permits (including endorsed plans) that have been issued for the land;
- Utility and/or insurance records;
- Records from old editions of the white or yellow pages;
- Photographs (including aerial photography);

It is important to note that you must prove that the use was continuous.

#### Can I lose existing use rights?

Yes. The protection of existing use rights is lost if the use of the land has stopped for:

- A continuous period of two years;
- Two or more periods which together total two years in any period of three years;

- In the case of seasonal use, two years in succession.

If the land is being used for the same purpose, however the activity on the land has decreased, the use is taken to be still occurring.

You can also lose existing use rights if you change the purpose for which the land is used (unless the new use is additional to and related to the existing use).

#### Where can I get further information?

This fact sheet is not an exhaustive explanation of existing use rights and should be used only as a preliminary guide for understanding existing use rights. To seek further information about existing use rights, or how to apply for a planning permit:

#### Visit our website:

<https://www.goldenplains.vic.gov.au/residents/my-home/planning/planning-permits>

**Contact the Planning Department:** 5220 7111

Monday-Friday 8:30am – 5pm

**Email:** [enquiries@gplains.vic.gov.au](mailto:enquiries@gplains.vic.gov.au).